

**MOTION NO. (225/89) KA 02-00347. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL RHYMES, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, CARNI, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (1576/90) KA 90-01576. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V HARRY AYRHART, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, LINDLEY, CURRAN, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (649/91) KA 02-00858. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WILLIAM J. BARNES, JR., DEFENDANT-APPELLANT.** -- Motion for reconsideration denied. PRESENT: SMITH, J.P., CENTRA, LINDLEY, DEJOSEPH, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (1200/02) KA 01-01201. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DENNIS TIMMONS, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis granted. Memorandum: Defendant contends that he was denied effective assistance of appellate counsel because counsel failed to raise an issue on direct appeal, specifically, whether the court erred when it failed to comply with CPL 310.30 in regard to Court Exhibit No. 3. Upon our review of the motion papers, we conclude that the issue may have merit. The order of November 15, 2002 is vacated and this Court will consider the appeal de novo (*see People v LeFrois*, 151 AD2d 1046). Defendant is

directed to file and serve his records and briefs with this Court on or before December 29, 2016. PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, TROUTMAN, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (1403/04) KA 02-00984. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICKY ORTA, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, DEJOSEPH, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (1573/07) KA 05-00983. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JAMES F. CAHILL, III, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, PERADOTTO, LINDLEY, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (7/08) KA 06-00538. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RANDY HALL, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis granted. Memorandum: Defendant contends that he was denied effective assistance of appellate counsel because counsel failed to raise issues on direct appeal, specifically, whether the court placed on the record a reasonable basis for restraining defendant before the jury and whether the court complied with CPL 310.30 in regard to Court Exhibit #11, a note from the jury during its deliberations. Upon our review of the motion papers, we conclude that these issues may have merit. Therefore, the order of February 1, 2008 is vacated and this Court will consider the

appeal de novo (*see People v LeFrois*, 151 AD2d 1046). Defendant is directed to file and serve his records and briefs with this Court on or before December 29, 2016. PRESENT: CENTRA, J.P., CARNI, DEJOSEPH, CURRAN, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (544/08) KA 05-00859. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTONIO D. COOLEY, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., PERADOTTO, NEMOYER, CURRAN, AND TROUTMAN, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (708/09) KA 06-02790. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MICHAEL D. SEELER, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, NEMOYER, CURRAN, AND TROUTMAN, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (114/10) KA 08-02140. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTONIO D. RUTLEDGE, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, TROUTMAN, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (447/14) KA 12-02292. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V PARISH M. STREETER, DEFENDANT-APPELLANT.** -- Motion for reargument denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, DEJOSEPH, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (631/14) KA 10-01782. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V BRIAN M. FISHER, ALSO KNOWN AS BRYAN MAURICE FISHER, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied.  
PRESENT: WHALEN, P.J., CARNI, NEMOYER, CURRAN, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (1226/14) KA 12-01612. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EMARIO C. ALLEN, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: SMITH, J.P., CENTRA, PERADOTTO, LINDLEY, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (1242/14) KA 13-00408. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ALLEN J. BURNS, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY, DEJOSEPH, AND TROUTMAN, JJ. (Filed Sept. 30, 2016.)

**MOTION NO. (1291/14) KA 11-01988. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ERIC BLACKSHEAR, DEFENDANT-APPELLANT.** -- Motion for writ of error coram nobis denied. PRESENT: WHALEN, P.J., SMITH, PERADOTTO, LINDLEY, AND CURRAN, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (295/15) KA 13-01211. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KELVIN VIERA-MORALES, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND DEJOSEPH, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (995/15) KA 10-00808. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JUAN C. MEDINA, DEFENDANT-APPELLANT. -- Motion to dismiss appeal granted. PRESENT: WHALEN, P.J., SMITH, LINDLEY, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (230/16) CA 15-01344. -- MICHAEL C. KERWIN, PLAINTIFF-RESPONDENT, V JOSEPH FUSCO, ET AL., DEFENDANTS, AND BH DECKER, INC., DEFENDANT-APPELLANT. JOSEPH FUSCO, ET AL., THIRD-PARTY PLAINTIFFS, V SUNSTREAM CORPORATION, THIRD-PARTY DEFENDANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., SMITH, CARNI, NEMOYER, AND CURRAN, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (254/16) CA 15-00328. -- KENNETH P. GOLDEN, PLAINTIFF-APPELLANT, ET AL., PLAINTIFF, V SASHA PAVLOV-SHAPIRO, M.D., ASSOCIATED MEDICAL PROFESSIONALS OF NY, PLLC, JEFFREY M. DESIMONE, M.D., CENTRAL NEW YORK SURGICAL PHYSICIANS, PC, AND UPSTATE UNIVERSITY HOSPITAL AT COMMUNITY GENERAL, DEFENDANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: PERADOTTO, J.P., LINDLEY, DEJOSEPH, CURRAN, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (281/16) CA 15-00398. -- DARLENE M. LOHNAS,  
PLAINTIFF-RESPONDENT, V FRANK A. LUZI, JR., M.D., AND NORTHTOWNS  
ORTHOPEDECS, P.C., DEFENDANTS-APPELLANTS. (APPEAL NO. 2.) -- Motion for  
reargument denied. Motion for leave to appeal to the Court of Appeals  
granted. PRESENT: WHALEN, P.J., CENTRA, CARNI, DEJOSEPH, AND TROUTMAN,  
JJ. (Filed Sept. 30, 2016.)

MOTION NO. (302/16) CA 15-01563. -- JEREMIAH CULLEN, PLAINTIFF-RESPONDENT,  
V AT&T, INC. AND AMERICAN TOWER, L.P., DEFENDANTS-APPELLANTS. -- Motion for  
leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J.,  
PERADOTTO, LINDLEY, NEMOYER, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (412/16) KA 14-00659. -- THE PEOPLE OF THE STATE OF NEW YORK,  
RESPONDENT, V TRACY L. BROOKS, DEFENDANT-APPELLANT. -- Motion for  
reargument denied. PRESENT: WHALEN, P.J., PERADOTTO, LINDLEY, DEJOSEPH,  
AND NEMOYER, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (448/16) CA 15-01764. -- ERIC WHITE AND NATIVE OUTLET,  
PLAINTIFFS-APPELLANTS, V ERIC T. SCHNEIDERMAN, NEW YORK STATE ATTORNEY  
GENERAL, IN HIS OFFICIAL CAPACITY, AND THOMAS H. MATTOX, COMMISSIONER, NEW  
YORK STATE DEPARTMENT OF TAXATION AND FINANCE, IN HIS OFFICIAL CAPACITY,  
DEFENDANTS-RESPONDENTS. -- Motion for leave to appeal to the Court of  
Appeals denied. PRESENT: WHALEN, P.J., CARNI, NEMOYER, TROUTMAN, AND  
SCUDDER, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (505/16) CA 15-01523. -- IN THE MATTER OF ELAM SAND & GRAVEL CORP., AND GARY EVANS, PLAINTIFFS-PETITIONERS-APPELLANTS, V TOWN OF WEST BLOOMFIELD, TOWN BOARD OF TOWN OF WEST BLOOMFIELD, TOWN OF WEST BLOOMFIELD PLANNING BOARD, SUE S. STEWART, NEIGHBORS TO SUPPORT WEST BLOOMFIELD AND CITIZENS TO SUPPORT WEST BLOOMFIELD, DEFENDANTS-RESPONDENTS-RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CENTRA, DEJOSEPH, CURRAN, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (514/16) KA 14-00658. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EUGENE LAWRENCE, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, DEJOSEPH, AND NEMOYER, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (547/16) CA 15-01795. -- PATRICIA KAREN KILLIAN, PLAINTIFF-APPELLANT, V CAPTAIN SPICER'S GALLERY, LLC, SPICER HOLDINGS, LLC, KENNETH A. HOOSON AND GREGORY K. HOOSON, DEFENDANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., SMITH, LINDLEY, NEMOYER, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (549/16) CA 15-00810. -- IN THE MATTER OF DON M. MOORE,  
PETITIONER-APPELLANT, V THE CENTRAL NEW YORK VOLLEYBALL OFFICIALS  
CORPORATION, RESPONDENT-RESPONDENT. -- Motion for reargument or leave to  
appeal to the Court of Appeals denied. PRESENT: WHALEN, P.J., SMITH,  
LINDLEY, NEMOYER, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

MOTION NO. (559/16) KA 15-02114. -- THE PEOPLE OF THE STATE OF NEW YORK,  
RESPONDENT, V MICHAEL TYO, DEFENDANT-APPELLANT. -- Motion for reargument  
and reconsideration denied. PRESENT: SMITH, J.P., CARNI, DEJOSEPH,  
CURRAN, AND TROUTMAN, JJ. (Filed Sept. 30, 2016.)

MOTION NOS. (980-981/16) KA 14-02216. -- THE PEOPLE OF THE STATE OF NEW  
YORK, RESPONDENT, V WATSON M. COOPER, DEFENDANT-APPELLANT. KA 14-02217. --  
THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V WATSON M. COOPER,  
DEFENDANT-APPELLANT. -- Motion to relieve counsel of assignment dismissed  
as premature and the appeals are dismissed. Memorandum: The matters are  
remitted to Cattaraugus County Court to vacate the judgments of conviction  
and dismiss the Indictment and Superior Court Information either sua sponte  
or on application of either the District Attorney or the counsel for  
defendant (*see People v Matteson*, 75 NY2d 745). PRESENT: WHALEN, P.J.,  
PERADOTTO, NEMOYER, CURRAN, AND TROUTMAN, JJ. (Filed Sept. 30, 2016.)

**KA 15-01970. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DISHAWN L. INFINGER, DEFENDANT-APPELLANT.** -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38). (Appeal from a Judgment of Wyoming County Court, Michael M. Mohun, J. - Attempted Promoting Prison Contraband, 1st Degree). PRESENT: WHALEN, P.J., SMITH, NEMOYER, CURRAN, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**KA 15-01681. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JASON R. PHILLIPS, DEFENDANT-APPELLANT.** -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38). (Appeal from a Judgment of Wyoming County Court, Michael M. Mohun, J. - Attempted Promoting Prison Contraband, 1st Degree). PRESENT: WHALEN, P.J., SMITH, NEMOYER, CURRAN, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)

**KA 15-01967. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ANTHONY TORRES, DEFENDANT-APPELLANT.** -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38). (Appeal from a Judgment of Wyoming County Court, Michael M. Mohun, J. - Attempted Promoting Prison Contraband, 1st Degree). PRESENT: WHALEN, P.J., SMITH, NEMOYER, CURRAN, AND SCUDDER, JJ. (Filed Sept. 30, 2016.)